

states that no amendment shall introduce new matter into the disclosure of the invention. The Office states that the added material, which is not supported by the original disclosure, are: an aramid polymer fiber and a polyethylene terephthalate polymer film material.

Applicant respectfully transverses the objection to new matter. Applicant believes that "an aramid polymer fiber" and "a polyethylene terephthalate polymer film material" are supported by the original disclosure. KEVLAR is the trade name for an aramid polymer fiber produced by DuPont. MYLAR is the trade name for a polyethylene terephthalate polymer film material produced by DuPont. The generic product name for specific polymer trade names can be found at <<<http://www.plasticsusa.com/tradenam.html>>>. The introductions of the generic terms for MYLAR and KEVLAR into the specification were required in the previous Office Action, which states, "the use of the trademarks KEVLAR and MYLAR has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology." In response to the Office Action, the generic terms for KEVLAR and MYLAR were introduced into the specification. As such, the Applicant believes that new matter was not been introduced by the amendment dated April 15, 2002.

Claim Rejections – 35 U.S.C. § 112, First Paragraph

Applicant acknowledges the quotation of 35 U.S.C. § 112, first paragraph.

Claims 4, 5 and 16 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Office states that the original disclosure doesn't support the polyethylene terephthalate (PET) polymer film material, which is now being used to represent MYLAR and the aramid polymer fiber material, which is now being used to represent KEVLAR, and that the previous reference had been to a high-temperature polyester film material. Applicant respectfully transverses this rejection because as previously stated, the introduction of the generic terminology for MYLAR and KEVLAR were required by a previous Office Action and such introduction does not constitute new matter. Polyethylene terephthalate polymer film materials and aramid polymer fiber materials are also classified as high-temperature polyester film materials and are therefore covered by the original disclosure of the invention. Additionally, referring to MPEP 2163.07, an amendment to an application to include

a dictionary or art recognized definition known at the time of the filing should not be considered new matter. It is the Applicant's belief that the introduction of the generic terms for MYLAR and KEVLAR as known in the art should not constitute new matter. As such, reconsideration and withdrawal of this ground of rejection is requested.

Claim Rejections – 35 U.S.C. § 112, Second Paragraph

Applicant acknowledges the quotation of 35 U.S.C. § 112, second paragraph.

Claims 1-16 stand rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Office states that claims 1-16 are indefinite because they claim a substantially uniform interstitial area between the inner and outer tanks then the claims recites, in contradiction, that the area is filled with two different materials. The Office contends that the "uniform" area, taken to mean unvaried and consistent, is made varied and non consistent by the introduction of two different materials. To overcome the Examiner's rejection, Applicant has amended claims 1 and 16 to remove the limitation of "uniform" from the interstitial area.

Claim Rejections – 35 U.S.C. § 102

Applicant acknowledges the quotation of 35 U.S.C. § 102(b).

Claims 1, 14 and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sanai et al. Reconsideration and withdrawal of this ground of rejection is requested for the reasons that follow.

As to claims 1, 14 and 15, the Office contends that Sanai discloses a luggage container, which has structure to store flammable and combustible liquids, and has secondary containment and which is inherently capable of performing as an aboveground storage tank. The Office cites Fig. 4a as comprising an inner primary tank, an outer secondary tank, insulating foam and a polymer material, which has inherent fire resistant characteristics, the polymer material sandwiched between the foam material and the outer secondary tank. The Office further contends that the container may be used as a tank to provide fuel to a generator.

Applicant respectfully traverses the conclusion by the office, because the luggage container taught by Sanai does not have structure capable of storing flammable and combustible

liquids. Accordingly, Sanai is not enabling for Applicant's objective.¹ The luggage container taught by Sanai is constructed to contain detonation products and debris. The luggage carrier as shown in Fig. 2 has hinges, panels, rupture ports and doors and is held together by rivets and metal screws, as such, it is not have structure to contain flammable and combustible liquids and is not inherently capable of performing as an aboveground storage tank.

In addition, the preamble of Applicant's claim limit the claims to an aboveground storage tank. As stated by the Federal Circuit:

No litmus test can be given with respect to when the introductory words of a claim, the preamble, constitute a statement of purpose for a device or are, in themselves, additional structural limitations of a claim. To say that a preamble is a limitation if it gives "meaning to the claim" may merely state the problem rather than lead one to the answer. The effect preamble language should be given can be resolved only on review of the entirety of the patent to gain an understanding of what the inventors actually invented and intended to encompass by the claim.²

Clearly, the stated objectives, advantages, drawings and specification of the present application all focus on an aboveground storage tank and not a luggage container. As Sanai does not describe a tank for containment of combustible liquids, it cannot be cited as prior art under 35 U.S.C. § 102(b).

If follows that independent claim 1 recites an invention that is not anticipated by Sanai and request that claim 1 be allowed.

Claim Rejections – 35 U.S.C. § 103

Applicant acknowledges the quotation of 35 U.S.C. § 103(a).

¹ See *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1471, 43 USPQ 2d 1481, 1489 (Fed. Cir. 1997) ("In order to render a claimed apparatus or method obvious, the prior art must enable one skilled in the art to make and use the apparatus or method." (quoting *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551, 13 USPQ 2d 1301, 1304 (Fed. Cir. 1989))).

² *Corning Glass Works v. Sumitomo Electric U.S.A. Inc.*, 9 USPQ 2d 1962, 1966 (Fed. Cir. 1989)

Claims 1, 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McGarvey in view of Sanai and Silverman et al. Reconsideration and withdrawal of this ground of rejection is requested for the reasons that follow.

The Office contends that McGarvey discloses the present invention, except that the fire resistant materials is not a polymer and is not sandwiched between the foam material and the outer secondary tank. The Office further states that it would have been obvious to modify the position of the fire resistant material to be relocated in the interstitial space between the foam material and the outer secondary tank if it was more important to protect the inner surface of the outer secondary tank from fire and a resulting explosion. The applicant respectfully disagrees with the Office's determination that it would have been obvious to modify the position of the fire resistant material. More specifically, McGarvey teaches the use of a mixture of hydrate aluminum-iron magnesium silicate and Portland Cement, commonly known as FENDOLITE. Due to the properties of Portland Cement, all combinations containing Portland Cement must be applied over metal, or wire lath or other suitable surfaces with an approved bonding agent. Therefore, because the FENDOLITE is a mixture containing Portland Cement, it would need to be applied to the surface of the inner tank (a metal surface) and could not be applied directly to the foam material as suggested by the Office. As such, it would not only be non-obvious, but based on the teaching of McGarvey, impossible to relocate the fire resistant material as suggested by the Examiner. Relocating the fire resistant material as suggested would render McGarvey's invention unsatisfactory for its intended purpose, and as such, there is no suggestion or motivation to make the proposed modification.

The Office acknowledges that McGarvey does not disclose the fire resistant material to be a polymer. The Office therefore relies on the teachings of Sanai and Silverman to establish the fire resistant material to be a polymer. The Office contends that it would be obvious to use MYLAR or KEVLAR as the fire resistant material since these polymer materials are equivalent to the polymer materials of Sanai and Silverman. Applicant agrees with the Office regarding the equivalence of the fire resistant materials polymer materials taught by Sanai and Silverman, however, Applicant does not agree that it would be obvious to combine the teachings of McGarvey with that of Sanai and Silverman. As disclosed by McGarvey at col. 5, lines 33-35, with reference to Fig. 5:

Fire-resistant material may, if desired, be sprayed via a nozzle onto the outermost tank walls to form a first layer 250a which is allowed to harden or cure in situ, covering all such walls.

McGarvey further discloses at col. 2, lines 10-13:

Also, fire resistant material may be applied as a coating to the inner tank surface, the thermal barrier materials located between the coating and the outer tank.

McGarvey's disclosure clearly suggests that the fire resistant material is to be applied to the outer surface of the inner tank by a method analogous to "spraying" or "coating". MYLAR and KEVLAR are fire resistant polymer textile materials. MYLAR and KEVLAR are not applied by spraying or coating of a surface and they are not required to harden or cure in situ. Therefore, McGarvey teaches away from the use of MYLAR or KEVLAR by disclosing a method for incorporating fire resistant material that does not apply to polymer textile materials. As such, Applicant believes it would not be obvious to combine the teachings of McGarvey with that of Sanai and Silverman. Applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

The Office contends that the Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action and therefore, this action is made final. Applicant respectfully traverses the Office's determination to make this action final. As previously stated in this response, Applicant does not believe that the amendment of April 15, 2002 adding the generic terms for MYLAR and KEVLAR constitutes new matter. Therefore, the new ground of rejection has not been necessitated by the Applicant's amendment and Applicant respectfully requests withdrawal of the finality of the rejection.

A Notice of Allowance is requested. Applicant is entitled to the *quid pro quo* promised to those who advance the useful arts.

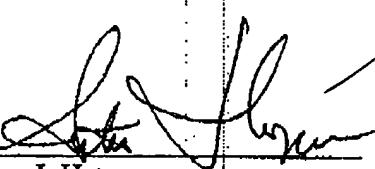
Conclusion

Applicant agrees that the art made of record and not relied upon is not more pertinent than the art made of record and relied upon.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested.

Very respectfully,

SMITH & HOPEN

By: 
Anton J. Hopen
USPTO Reg. 41,849
Suite 220
15950 Bay Vista Drive
Clearwater, FL 33760
(727) 507-8558
Attorneys for Applicant

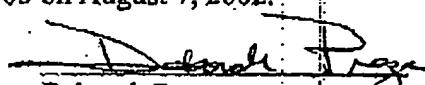
Dated: August 7, 2002

pc: Marshall R. Moore

CERTIFICATE OF FACSIMILE TRANSMISSION
(37 C.F.R. 1.8)

I HEREBY CERTIFY that this Amendment AF, including Exhibit A, is being transmitted by facsimile to the United States Patent and Trademark Office, Technology Center 3700, Art Unit 3727, Attn: Stephen J. Castellano, (703) 872-9303 on August 7, 2002.

Dated: August 7, 2002


Deborah Preza